IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 16490 of 2003

Between:

Rambha Mohan, S/o. Late Rambha Narasimha Rao
Occ: Associate Professor (Chemical engineering)
R/o.H.No.7-1-189, 2nd Floor, Maruthi Street, Bandimet,
Secunderabad

..... PETITIONER

AND

1 The Principal Padmasri Dr.B.V.Raju Institute of
Technology, Vishnupur, Narsapur, Medak District

2 The Chairman, Sri Vishnu Educational Society,
Plot No. 153/2nd floor Sita Nilayam, Dwarakapuri Colony
Punjagutta, Hyderabad.

3 The Secretary & Correspondent, Padmasri Dr.B.V.Raju
Institute of Technology, Vishnupur, Narsapur
Medak District

4 The Government of Andhra Pradesh, rep. by its Secretary,
Higher Education Department Secretariat, Hyderabad

5 The Commissioner of Technical Education, Burgula
Ramakrishna Rao Bhavan, Tankbund Road, Hyderabad

6 Jawaharlal Nehru Technological University,Rep. by Registrar, Kukatpally,
Hyderabad.

R6 is impleaded as per Court order, dated 22-04-2004 in WPMP No.9800/04

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ order or direction more particularly one in the nature of Writ of "Mandamus" declaring the action of the 1st respondent in relieving the petitioner without assigning any reasons and without obtaining prior approval from the competent authority as illegal, arbitrary, discriminatory and without jurisdiction and contrary to Andhra Pradesh Education Act, 1982 and consequently set aside the order dated 4.6.2003 issued by the 1st respondent relieving the petitioner from the duties as Associate Professor in Chemical Engineering Department in Padmasri Dr.B.V.Raju Institute of Technology, Vishnupur, Narsapur, Medak District and consequently direct the respondents to continue the petitioner as Associate Professor in Chemical Engineering Department in Padmasri DR.B.V.Raju Institute of Technology, Vishnupur, Narsapur, Medak District with continuity of service and consequential benefits in the interest of justice

Counsel for the Petitioner: PARTY- IN- PERSON,MR.RAMBHA MOHAN
Counsel for the Respondent Nos. 1 and 2: MR.C.KODANDA RAM
Counsel for the Respondent Nos.4 and 5: GP FOR HIGHER EDUCATION
Counsel for the Respondent Nos.3 and 6: None appeared

The Court made the following :

ORDER

Heard the petitioner, Rambha Mohan, who appeared in this proceedings as a party in person, though the writ petition was initially filed by a counsel and also Sri C.Kondanda Ram, learned counsel appearing on behalf of the respondents 1 and 2 and the Government Pleader for Education.

Initially at the time of admission, this Court granted interim direction as per the orders in W.P.M.P.No.20470/2003, dated 03-11-2003 and on filing of the vacate application, the same was made absolute *inter alia* on the ground that the impugned action of the 1st respondent in relieving the petitioner from service is in violation of Section 79 of the A.P. Education Act, 1982. Later on when the matter came up for final hearing, it was represented that having regard to such

interim orders, no further orders are necessary. Therefore, the writ petition was accordingly disposed of on 17-01-2005. Subsequently by Review application filed by the contesting respondent in Review W.P.M.P.No.1221of 2005, the same was allowed as per the orders dated 07-02-2005. It was pointed out that the aforesaid interim orders was later on varied in appeal by the Division Bench in writ appeal No.101 of 2004, dated
04-02-2004 and the same was set aside. Therefore, having felt that the matter requires to be considered on merits, the main writ petition is taken up for hearing.

At this stage, the party in person appeared himself and made his submissions. The main relief sought for in the writ petition was against the impugned orders dated 04-06-2003 passed by the 1st respondent herein whereunder the petitioner was sought to be relieved from his duties with immediate effect due to administrative reasons.

The case of the petitioner in brief is that he is highly qualified having acquired qualification in B. Tech., in Chemical Engineering and also Post Graduation in the branch of Minieral Processing Engineering from Andhra University College of Engineering, Visakhapatnam and has got four years of Industrial experience and thirteen years of teaching experience as Senior Lecturer/Assistant Professor in R.V.College of Engineering, Bangalore. Since he intended to come back to native State, he applied for the post of Assistant Professor in Chemical Engineering Department with the 1st respondent. Accordingly he was appointed as per the orders, dated 27-09-1999 as Assistant Professor on Ad-hoc basis. Subsequent having met the Chairman and other concerned of the institution, it was promised that he would be given permanent posting and having regard to the same, the petitioner resigned for the post at Bangalore on 18-11-1999 and joined in the present post and discharging his duties to the utmost satisfaction of the students and the Management and having regard to such satisfaction only, the respondents have given him three increments on 17-09-2000. However, it was pointed out that surprisingly when the petitioner sought for Earned Leave for ten days from 19-06-2003, the impugned order came as a relieving order and the same was received by him by post on 05-07-2003. The main submission made on behalf of the petitioner is that the question of relieving him from the post does not arise as long as there is no order of

termination as required under the law. Further, it is also pointed out that the Secretary and Correspondent of College Society is competent to issue such orders and the 1st respondent has no jurisdiction and the impugned orders also suffer from vice of personal animacity. That apart, the impugned order also does not disclose any reasons apart from the fact that it was in violation of the rules made by the institution. Above all, the main submissions as sought to be focussed by the petitioner by placing reliance under Section 79 of the A.P. Education Act, 1982, is no prior approval was obtained from the competent authority before any action is being taken in removal or dismissal or discharging the petitioner and relieving him from the said post. It is also contended that as per the decision of the Division Bench of this Court reported in 1991 (3) ALT Page No.335, the said provision is equally applicable to the temporary employee. Having regard to the same, though the petitioner was appointed on Ad-hoc basis and in view of the aforesaid provisions, the impugned action is in the teeth of mandate as required under the law. In the circumstances, the petitioner sought for mandamus to declare the said action as illegal.

In the counter affidavit, which was initially filed along with vacate stay application, the bone of contention raised on behalf of the 1st respondent basically is to the effect that the petitioner infact does not qualified to the post, since he passed B.Tech in 2nd class and the minimum qualification required is a 1st class. Further, even the Post Graduation degree in Science and Mineral Processing Engineering which he passed in 1st class is not the required or prescribed qualification. Therefore, the very appointment of the petitioner even as an Assistant Professor on Ad-hoc basis is squarely by oversight and apparently the petitioner's Post Graduation qualification was taken on consideration and such appointment was given. The allegation that there was any such promise on the part of the institution is denied. Further the petitioner also infact has to face the selection committee and then only, his case could have been considered. However even though the intimation was given, the petitioner has deliberately absent from himself from the Staff Selection Commission for regularization of his appointment. Since he never appeared before any such selection committee, he cannot make any ground. Further it is also contended that there was no representation made earlier to the effect that

the petitioner has received any intimation in regard to the non service of the notice for such appearance at any time except in the affidavit filed in support of the petition. It is also contended that the petitioner himself has voluntarily tendered his resignation and apart from that the petitioner himself absented continuously w.e.f.
09-06-2003 and having regard to the attitude adopted by the petitioner, he has been rightly relieved w.e.f. 09-06-2003. Further the Chairman of the Governing body is fully competent to dismiss the petitioner which the petitioner fully aware and also that apart the plea as to requirement of prior approval under Section 79 of the A.P. Education Act, 1982. It was stated that as per Section 1 (3)(ii) of the said Act, the said provision do not apply to the institution which are affliated to Jawaharlal Nehru Technological University. In view of the same, there is no violation. Hence the 1st respondent sought for dismissal of the writ petition.

The petitioner had filed a reply affidavit reiterating the very same allegations in regard to qualification, experience, competence and the promise extended by the respondents.

Having considered the submissions made and also on perusal of the material available on record, the main question which arises for consideration is as to whether on the facts and circumstances of the case, the impugned action on the part of the respondents in reliving the petitioner as per the orders, dated 04-06-2003 is valid?

On the facts as narrated above, the undisputed facts are to the effect that the petitioner is admittedly holding qualifications in B.Tech and also Post Graduation in the branch of Mineral Engineering. He was employed at the relevant point of time at Bangalore. On his application, the petitioner was appointed by virtue of order, dated 27-09-1999 as an Assistant Professor in Chemical Engineering Department. The case of the petitioner squarely rests on the footing that there was a promise from the respondent that he would be given regular posting and on such promise only, he went back and resigned to his post at Bangalore on
18-11-1999 and joined the present service on 19-11-1999. Further he was also given three increments later on in the year 2000. However, surprisingly his services were sought to be terminated by issuance of relieving order on 04-06-

2003 which was received by him on 05-07-2003 through registered post. Though the other contentions have been raised in regard to competency, the same cannot be accepted though the Governing body has no such power to terminate the services in what ever capacity be. The main submission centered around is absence of prior approval from the competent authority as required under Section79 of the A.P. Education Act, 1982. There cannot be any dispute in regard to the requirement as provided for under such provision. Further it was also contended on behalf of the petitioner that the Division Bench of this Court in ***Vasavi College of Engineering, Hyderabad rep. By its Honorary Secretary v A.Suryanarayana and others*** held that the said provision is mandatory and that also applies to the temporary employees. Therefore, it cannot be said that the said provisions could not have an application. But for a specific provision contained in the very same Act, it is pointed out by the learned counsel appearing on behalf of the contesting respondent that Section 1 (3)(ii) of the said Act specifically makes an exception in regard to the institutions established or maintained and administered by or affiliated to or recognized by the Andhra Pradesh Agricultural University and the Jawaharlal Nehru Technological University. Having regard to the same, the requirement that provided for nor any provision made thereunder would not made applicable nor can apply to the facts of the case. Though there is no dispute in regard to the absence of any such prior approval, in view of the specific exclusion made under the aforesaid provision, the petitioner cannot make any reliance on such prior approval as created in the aforesaid statute. In the circumstances, I do not find any merits in the said plea.

Coming to the other aspects of the case, admittedly, the petitioner was appointed only on Ad-hoc basis that is on the same lines as in the temporary nature and would not create any enforceable right to seek any such employment and continue as long as he has not been regularly appointed or processed through regular selection committee. Admittedly, the petitioner did not appear before the selection committee and in view of the same, the impugned order could have been given by the respondent for which the petitioner stated that he did not receive it. In the circumstances, I do not find that the petitioner can make any valid ground challenging the relieving order

passed, however, leaving open to the petitioner to make any fresh application seeking for appointment for any post to which he was qualified with the respondent and the same shall be considered on merits uninfluenced by any of the findings given in this proceedings.

Accordingly, the writ petition is dismissed however, leaving open to the petitioner to make any fresh application seeking appointment to any post to which he was qualified with the respondent and the same shall be considered on merits uninfluenced by any of the findings given in this proceedings. No costs.

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20 -06-2005

Hsd.

To

1 The Principal Padmasri Dr.B.V.Raju Institute of Technology, Vishnupur, Narsapur, Medak District

2 The Chairman, Sri Vishnu Educational Society, Plot No. 153/2nd floor Sita Nilayam, Dwarakapuri Colony Punjagutta, Hyderabad.

3 The Secretary & Correspondent, Padmasri Dr.B.V.Raju Institute of Technology, Vishnupur, Narsapur Medak District

4 The Scretary, Higher Education Department, Government of Andhra Pradesh, Secretariat, Hyderabad

5 The Commissioner of Technical Education, Burgula Ramakrishna Rao Bhavan, Tankbund Road, Hyderabad

6 The Registrar, Jawaharlal Nehru Technological University., Kukatpally, Hyderabad.

7. 2 C.Cs to G .P. for Education, High Court buildings, Hyderabad (OUT)

8. 2 CD copies.